

Notice of Allowability**Application No.**

10/021,509

Applicant(s)

GINGRAS ET AL.

Examiner

Michael A. Belyavskiy

Art Unit

1644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 04/02/09.
2. ☒ The allowed claim(s) is/are 1,3,5,11,15,16 and 40-42.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: ____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date ____.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date ____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date 01/03/09; 01/02/09; 03/21/06; 08/30/04;
01/07/03
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☒ Interview Summary (PTO-413),
Paper No./Mail Date 10/15/10.
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other ____.

/Michael A Belyavskiy/
Primary Examiner, Art Unit 1644

DETAILED ACTION

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 04/02/09 has been entered.

Claims 1, 3, 5, 11, 15, 16, 40-42 are pending and allowed.

EXAMINER'S AMENDMENT

2. An Examiner's Amendment to the record appears below. Should the changes and/or additions be unacceptable to Applicant, an amendment may be filed as provided by 37 C.F.R. § 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the Issue Fee.

3. Authorization for this Examiner's Amendment was given in a telephone interview with Eugene Roussel on 10/15/10.

In the Claims:

4. Claim 1 has been replaced with :

-- A method of modulating an immune response including administering to an animal, in need thereof, a composition comprising a soluble polypeptide of SEQ ID NO:2 or a fragment thereof, wherein said fragment consist of amino acid 1-136 of SEQ ID NO:2, in an amount effective to modulate the levels and/or ligand binding activity of TREM -1 whereby the immune response is modulated in the animal.--

5. Claim 3 has been replaced with:

--The method of claim1, wherein said polypeptide or said fragment duplicate SEQ ID NO:2 or a portion of amino acid 1-136 of SEQ ID NO:2.--

6. In claim 11

the word -- or -- has been added following the phrase "said polypeptide";
the phrase "or equivalent" has been deleted.

REASONS FOR ALLOWANCE

7. The following is an Examiner's Statement of Reasons for Allowance:

The previous rejection of record, mailed on 12/18/08 is hereby withdrawn in view of:

- (i) The Examiner's Amendment set forth supra;
- (ii) Applicant's amendment filed 04/02/09;
- (iii) BPAI decision on 03/31/08. In said decision it was stated that it would not require undue experimentation for one skill in the art to make and test a series of peptides duplicating portions of SEQ ID NO:2 for the ability to modulate an immune response.
- (iv) Applicant's submission on 04/02/09 that SEQ ID NO:2 of the instant claims is functionally and structurally different from SEQ ID NO: 498 of prior art of Reuben et al.

The prior art does not teach or suggest a method of modulating an immune response as recited in claims 1, 3, 5, 11, 15, 16, 40-42.

8. Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michail Belyavskiy whose telephone number is 571/ 272-0840. The examiner can normally be reached Monday through Friday from 9:00 AM to 5:30 PM. A message may be left on the examiner's voice mail service. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ram Shukla can be reached on 571/ 272-0735.

The fax number for the organization where this application or proceeding is assigned is 571-273-8300

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Michail A Belyavskyi/
Primary Examiner, Art Unit 1644